

## REMARKS

Claims 1-13 were pending in this Application as of the Office Action of August 1, 2008, with claims 10 and 12 having been previously withdrawn. Claims 1, 4, and 9 are amended with this Response. Claim 6 is cancelled. A Petition to Revive this Application as Unintentionally Abandoned is submitted herewith.

### Rejections under 35 U.S.C. §112, second paragraph

Claims 1-9, 11, and 13 are rejected under 35 U.S.C. §112, second paragraph for allegedly being indefinite. In Response, Applicant respectfully amends claims 1, 4, and 9.

### Rejections under 35 U.S.C. §102(b)/103(a)

Claims 1-3 and 9 have been rejected under 35 U.S.C. §102(b) as being anticipated by or, under 35 U.S.C. §103(a) as being obvious over, United States Patent No. 5,642,601 to Thompson ("Thompson" hereinafter). Applicant respectfully traverses.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."  
*Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicant's amended claim 1 recites, *inter alia*:

"said cellulose fibers having a length between about .5 to 10 mm...said synthetic

fibres being crimped fibres and having a length between 12 to 75 mm....said bicomponent fibres having a length between 1 to 10 mm.”

As is essentially admitted to by the Examiner, Thompson does not teach cellulose fibers having a length between about .5 to 10 mm, crimped fibers having a length between 12 to 75 mm, or bicomponent fibers having a length between 1 to 10 mm. As evidence of such, Applicant respectfully points out that the Examiner states that Thompson does not appear to teach the length of fibers (please see page 4, lines 4-5 of the Office Action), and uses Frenette (see remarks as they relate to the now cancelled claim 6 below) to teach length fiber length.

For at least these above reasons, Applicant respectfully submits that Thompson does not teach every element of Applicant's claims 1-3 and 9. Therefore, it is respectfully asserts that claims 1-3 and 9 are not anticipated by Thompson. In addition, since Thompson does not teach every element of Applicant's claims 1-3 and 9, Applicant respectfully submits that *prima facie* obviousness does not exist regarding claims 1-3 and 9 with respect to Thompson.

Applicant further notes that Applicant's claimed composition of fibres and fibre lengths allows for a more efficient use of the bi-component fibres, which is advantageous with regard to production costs and obtaining a voluminous fibre product with good spring elastic properties.

The technical problem associated with these advantages cannot be deduced from the disclosure of Thompson. The skilled person would therefore not be directed toward solving the problems associated with the above advantages by consulting the teachings of Thompson. As such, clearly, one of ordinary skill at the time of Applicant's invention would not have a motivation to modify the reference, or a reasonable likelihood of success in forming the claimed invention by modifying. Thus, here again, *prima facie* obviousness does not exist. *Id.*

Rejections under 35 U.S.C. §103(a)

Claims 1-3 and 9 have been rejected under 35 U.S.C. §103(a) as being obvious over Thompson in view of United States Patent No. 4,188,531 to Hauser ("Hauser" hereinafter). Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

For at least the reasons discussed in the above 102/103 rejection, Applicant respectfully asserts that Thompson does not teach every element of Applicant's claims 1-3 and 9. Since Hauser does not remedy the deficiencies of Thompson, Applicant further asserts that the proposed combination of Thompson and Hauser does not teach every element of Applicant's claims 1-3 and 9. Accordingly, Applicant respectfully submits that *prima facie* obviousness does not exist regarding claims 1-3 and 9 with respect to the proposed combination Thompson and Hauser. Since the proposed combination of Thompson and Hauser fails to teach or suggest all of the limitations of claims 1-3 and 9, clearly, one of ordinary skill at the time of Applicant's invention would not have a motivation to modify or combine the references, or a reasonable likelihood of success in forming the claimed invention by modifying or combining. Thus, here again, *prima facie* obviousness does not exist. *Id.*

Claims 4-17, 11, and 13 have been rejected under 35 U.S.C. §103(a) as being obvious over Thompson, or Thompson and Hauser, in view of United States Patent No. 5,516,580 to Frenette ("Frenette" hereinafter). Applicant respectfully traverses this rejection. As Frenette is cited with particular reference to fiber length, Frenette (as combined with Thompson or Thompson and Hauser) may now be addressed with

reference to the fiber length elements recited in Applicant's amended claim 1.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

In addition, Applicant can rebut a presumption of obviousness based on a claimed invention that falls within a prior art range by showing "(1) [t]hat the prior art taught away from the claimed invention...or (2) that there are new and unexpected results relative to the prior art." *Iron Grip Barbell Co., Inc. v. USA Sports, Inc.*, 392 F.3d 1317, 1322, 73 USPQ2d 1225, 1228 (Fed. Cir. 2004).

It is again respectfully pointed out that Applicant's amended claim 1 recites, *inter alia*:

"said cellulose fibers having a length between about .5 to 10 mm...said synthetic fibres being crimped fibres and having a length between 12 to 75 mm...said bicomponent fibres having a length between 1 to 10 mm."

As is stated at page 6, lines 12-14, Thompson is silent regarding length of cellulose and bicomponent fibers. The Examiner accordingly uses Frenette to allegedly teach the above quoted claim elements.

Frenette teaches cellulose fibers 11 between 1mm and 4mm and bicomponent fibers 13 that are greater than 4mm, and preferably longer than 25mm. As such, Applicant respectfully points out that Frenette teaches nothing more than respective overlapping portions in the claimed cellulose and bicomponent ranges of .5-10mm and 1-10mm respectively. As is set forth in MPEP 2144.05, an obviousness based on such

overlap may be rebutted by showing that the cited reference teaches away from the claimed invention. Applicant respectfully asserts that Frenette teaches away from Applicant's claimed ranges in a material way.

Referring to column 3, lines 5-8, Frenette clearly teaches the bicomponent fibers 13 to be "longer" than the cellulose fibers 11. As such, Frenette teaches away from any overlap between the length of the cellulose fibers 11 (1-4mm) and the length of the bicomponent fibers 13 (longer than 4mm). Therefore, Frenette teaches away from cellulose fibers that are greater than 4mm, and thus as long or longer than bicomponent fibers included in the "more than 4mm" range. Accordingly, Frenette teaches away from a claimed invention that includes cellulose fibers between 4-10mm, as is recited in Applicant's claims. In fact, Frenette teaches away from (and at least certainly fails to teach) the positively recited overlapping lengths of the cellulose and bicomponent fibers of Applicant's claims.

As further evidence of this "teaching away," Applicant respectfully cites column 3, lines 13-14 of Frenette, which states that the bicomponent fibers are preferably longer than 25mm. Such a teaching not only ensures the lack of overlap, and a relative shortness of the cellulose fibers, as discussed above, but also to some extent teaches away from bicomponent fibers between 1 and 25mm (which obviously includes the 1-10mm length recited in Applicant's claims).

Applicant further notes that, according to MPEP 2144.05, an obviousness based on such overlap may be rebutted by showing there are new and unexpected results relative to the prior art. In the case of Applicant's instant claims, these unexpected results stem from the claimed fiber lengths, allowing for a more efficient use of the bi-component fibres, which is advantageous with regard to production costs and obtaining a voluminous fibre product with good spring elastic properties. These unexpected results are particularly apparent in light of page 4, lines 5-12 of Applicant's PCT Application, which demonstrates the unexpected advantages of relatively short bicomponent fibers by stating that "By using short bi-component fibers, it is possible to ensure a thorough opening/separation of the expensive bi-component fibers and a very homogeneous

distribution in the forming process. Furthermore, the advantage of using short bi-component fibers is that they provide more "fiber ends" or contact points resulting in a more consistent end product and allowing for a reduction in the use of bi-component fibers."

For at least the above reasons, Applicant respectfully asserts that any alleged finding of obviousness based on overlapping ranges is rebutted under MPEP 2144.05.

For at least the reasons discussed above (i.e. none of Thompson, Hauser, or Frenette teach the overlapping lengths of the cellulose and bicomponent fibers recited in Applicant's claims), Applicant also respectfully asserts that the proposed combinations of Thompson and Frenette or Thomson, Hauser, and Frenette do not teach every element of Applicant's claims 1-5, 7-9, 11, and 13. Accordingly, Applicant respectfully submits that *prima facie* obviousness does not exist regarding claims 1-5, 7-9, 11, and 13 with respect to the proposed combinations of Thompson and Frenette or Thomson, Hauser, and Frenette.

Claim 8 has been rejected under 35 U.S.C. §103(a) as being obvious over Thompson, or Thompson and Hauser, in view of United States Patent No. 5,858,530 to McCullough ("McCullough" hereinafter). Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

For at least the reasons discussed in the above 102/103 rejection, Applicant respectfully asserts that Thompson does not teach every element of Applicant's claims 1-3 and 9. Since neither Hauser nor McCullough remedy the deficiencies of Thompson, Applicant further asserts that the proposed combinations of Thompson and McCullough,

or Thompson, Hauser, and McCullough do not teach every element of Applicant's claim 8. Accordingly, Applicant respectfully submits that *prima facie* obviousness does not exist regarding claim 8 with respect to the proposed combinations of Thompson and McCullough, or Thompson, Hauser, and McCullough. Since the proposed combinations of Thompson and McCullough, or Thompson, Hauser, and McCullough fail to teach or suggest all of the limitations of claim 8, clearly, one of ordinary skill at the time of Applicant's invention would not have a motivation to modify or combine the references, or a reasonable likelihood of success in forming the claimed invention by modifying or combining. Thus, here again, *prima facie* obviousness does not exist. *Id.*

Conclusion

Applicant believes that all of the outstanding objections and rejections have been addressed herein and are now overcome. Entry and consideration hereof and issuance of a Notice of Allowance are respectfully requested.

Applicant hereby petitions for any extension of time under 37 C.F.R. 1.136(a) or 1.136(b) that may be necessary for entry and consideration of the present Reply.

If there are any charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

The Office is invited to contact applicant's attorneys at the below-listed telephone number concerning this Amendment or otherwise regarding the present application.

Respectfully submitted,  
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